

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

United States of America)
)
 v.) Docket No. 5:20-mj-00487-HJB-1
)
 Cody Donovan Smith,) San Antonio, Texas
) April 7, 2020
 Defendant.)
)

TRANSCRIPT OF VIDEO DETENTION HEARING
BEFORE THE HONORABLE RICHARD B. FARRER
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT (BY VIDEO):

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COURT RECORDER: FTR Gold

Proceedings reported by electronic sound recording. Transcript
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1 (2:30 p.m.)

2 THE COURT: Okay, everyone. I think we're about ready
3 to proceed. Just making sure we have our recording equipment
4 online.

5 Okay. Are we all set, Amy?

6 THE CLERK: [Inaudible].

7 THE COURT: Sounds good?

8 THE CLERK: I can hear everybody.

9 THE COURT: Okay. All right. We'll start -- we'll
10 start things off. I'll go ahead and call this case. Let me
11 see here.

12 And, Amy, the CR number is the current case number?

13 THE CLERK: [Inaudible].

14 THE COURT: Oh, it's this MJ number?

15 THE CLERK: Uh-huh.

16 THE COURT: Okay. All right. Let's go ahead and call
17 this case. So next up before the Court is case number
18 SA:20-MJ-487, United States of America versus Cody Donovan
19 Smith. We are set for an identity hearing and a detention
20 hearing. We're doing this by video teleconference. And so
21 just to ensure that the record is clear, I have on the
22 teleconference from the detention facility is Mr. Smith.

23 And, Mr. Smith, are you able to hear me and see me?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Thank you, sir.

1 And then also on the line we have Mr. Lara, who is
2 Mr. Smith's counsel.

3 Mr. Lara, are you able to hear and see me?

4 MR. LARA: Yes, Your Honor.

5 THE COURT: Okay. And Ms. Garcia from the U.S.
6 Attorney's office, can you see and hear me as well?

7 MS. GARCIA: [Inaudible].

8 THE COURT: Ms. Garcia, are you able to hear me and
9 see me?

10 MS. GARCIA: Yes, I can. It's very [inaudible], Your
11 Honor. I don't know why.

12 THE COURT: Okay. I'll try to -- I'll try to speak
13 loudly. Does that help?

14 MS. GARCIA: [Inaudible].

15 THE COURT: I might just be too soft-spoken.

16 And then, also, we have pretrial services on the line. Is
17 that right?

18 PRETRIAL OFFICER: Yes, Your Honor. Alejandro Cruz.

19 THE COURT: Okay. Great.

20 Mr. Lara, let me just start with you. First up, my
21 understanding is that your client wishes to waive the identity
22 hearing. Is that correct?

23 MR. LARA: Yes, Judge. We discussed it last week, and
24 it was our decision to waive the identity hearing and move
25 forward with the detention hearing.

1 THE COURT: Okay. So we're moving forward on
2 detention hearing.

3 And then, as I mentioned at the outset, we're conducting
4 this detention hearing by video teleconference because of the
5 current coronavirus/COVID-19 outbreak and situation. And so I
6 just want to confirm with you, Mr. Lara, that you've had an
7 opportunity to discuss with your client what's involved with
8 conducting this proceeding by video and that your client is
9 comfortable with and does waive his presence at this hearing
10 and also his right to be present here to confront any
11 witnesses. Is that correct?

12 MR. LARA: Yes, Your Honor. We discussed it, as well
13 [inaudible].

14 THE COURT: Okay.

15 MR. LARA: [Inaudible].

16 THE COURT: You're breaking up a little bit. Can you
17 just go ahead and repeat that for me?

18 MR. LARA: Yes, Judge. We want to move forward with
19 the detention hearing. We have discussed the issue of
20 [inaudible].

21 THE COURT: Okay. Thank you.

22 And he's comfortable to waive his presence; is that
23 correct?

24 MR. LARA: Yes, Your Honor.

25 THE COURT: Okay. All right. And then the intent

1 here is to proceed by proffer; is that correct, Ms. Garcia?

2 MS. GARCIA: Your Honor, we'd ask for detention -- to
3 show notice of the pretrial services report prepared by
4 Alejandro Cruz and also the indictment pending in the District
5 of Wyoming, which I had hoped a copy was provided to the Court.

6 THE COURT: Yes. I have -- I have both of those
7 matters, and I am considering them. I have them here on my
8 screen as I'm talking to you all. So let me just -- if I can,
9 just explain to Mr. Smith briefly.

10 So what we're doing, Mr. Smith, is addressing the question
11 of bail or pretrial release in this hearing. You're entitled
12 to the presumption of innocence on the underlying charges.
13 And, obviously, nothing that takes place during this hearing is
14 intended to or should be deemed to affect that underlying
15 presumption of innocence. And, likewise, any findings I may
16 issue are also not intended to affect that presumption.

17 The Bail Reform Act is the statute that applies to the
18 determination that we're -- that we're going to investigate
19 here today and the ruling that I'll make at the end of this
20 hearing with respect to pretrial release or bail. The Bail
21 Reform Act calls me to consider various factors in making my
22 decision. And those include the nature and circumstances of
23 the alleged offense, the weight of the evidence against the
24 defendant, the history and characteristics of the defendant and
25 also the nature and seriousness of the danger to others or the

1 community.

2 The government bears the burden in this hearing to show
3 that you need to be detained between now and further
4 proceedings. And in your case, at least as it stands now, that
5 would be if you -- whether you're detained until further
6 proceedings are set in Wyoming or whether you can be released
7 on bond pending those further proceedings. But Mr. Lara will
8 be able to talk to you in much greater detail about how things
9 will go forward in terms of what other proceedings may be
10 conducted.

11 So with that, sort of, general background, I'll turn things
12 over to the government. And, Ms. Garcia, if you'd like to
13 proceed with your --

14 MS. GARCIA: Yes, Your Honor.

15 THE COURT: -- with your presentation.

16 MS. GARCIA: We proffer, Your Honor --

17 THE COURT: It's okay. Go ahead.

18 MS. GARCIA: Can I be heard?

19 THE COURT: Yes.

20 MS. GARCIA: I proffer the application affidavit of
21 Jacob Olson, which was attached to a search warrant that was
22 [inaudible].

23 THE COURT: Oh, I've lost you, Ms. Garcia. Hold on.

24 MS. GARCIA: [Inaudible].

25 THE COURT: Our connection -- our connection's tough.

1 I heard you -- just start over with the proffer. And then I
2 lost you a bit.

3 MS. GARCIA: [Inaudible] proffer the affidavit of
4 Agent Olson.

5 THE COURT: Okay.

6 MS. GARCIA: And in Count 1 [inaudible] when she was
7 [inaudible].

8 UNIDENTIFIED SPEAKER: [Inaudible] hear?

9 THE COURT: Yeah. No. You're breaking up,
10 Ms. Garcia. Hold on. I think we have a tough connection.

11 MS. GARCIA: [Inaudible].

12 THE COURT: Yeah. No. We're having a tough time
13 hearing you. So why don't we try one more time, Ms. Garcia.
14 You've --

15 MS. GARCIA: Am I heard at all or --

16 THE COURT: You are. And it sounds like your internet
17 connection is a little bit dicey. And so you're coming in and
18 out. Why don't we try one more time.

19 MS. GARCIA: Okay. I'll get closer. I proffer the
20 affidavit of Agent Olson which accompanies his application for
21 a search warrant in Florida to search the vehicle operated by
22 Cody Smith when he kidnapped the victim and took her into
23 Yellowstone Park. It outlines everything that happened between
24 -- as relayed by the victim, and then the investigation that
25 followed in securing a photograph of [inaudible] car as it

1 entered Yellowstone; and would tender calls, registration
2 communication between he and the victim leading to the search
3 in Florida, the vehicle in which he was operating.

4 And I have Agent Olson online as well, Your Honor,
5 participating in this video conference, in the event that
6 there's questions.

7 THE COURT: Okay. So I have the written proffer, at
8 least the written materials that are proffered.

9 Mr. Lara, how do you -- how would you like to proceed?

10 MR. LARA: Judge, I had a few questions for Agent
11 Olson [inaudible]. Not too many, just a few questions to ask
12 him [inaudible] that affidavit.

13 THE COURT: Okay. Let's see if -- let's see if
14 that -- if we can pull that off. Just don't be afraid to speak
15 up. I think it's better to be loud than not heard.

16 Now, do we have Agent Olson on the line?

17 THE WITNESS: I'm here. Can you hear me okay?

18 THE COURT: Yes. I can hear you.

19 Mr. Smith, can you hear Agent Olson?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Okay. Mr. Lara, why don't you just
22 proceed?

23 THE WITNESS: [Inaudible] excuse me. My computer just
24 died, for whatever reason. So I'm on a cellphone. So I don't
25 have the affidavit in front of me. So I'll try to do the best

Jacob Olson - Cross

1 I can. I apologize.

2 THE COURT: Okay. And let me just -- since you're
3 going to testify -- so why don't I just go ahead and place you
4 under oath. Will you please raise your right hand?

5 (The oath was administered)

6 THE COURT: Okay. Thank you
7 Mr. Lara, go ahead

8 MR. LARA: Sure.

9 CROSS-EXAMINATION

10 BY MR. LARA:

11 Q. First of all, I just wanted to -- Mr. Olson, can you hear
12 me clearly?

13 A. Yes, sir.

14 Q. Okay. First of all, I just wanted to clarify, Mr. Smith
15 was booked into custody. And are you aware whether or not he
16 complied with the agents who arrested him on that day, in
17 March?

18 A. Oh, per the arresting officers [inaudible].

19 Q. He didn't attempt to flee or run from the agents that were
20 there on the -- on the scene?

21 A. I was -- I was told that he was very compliant.

22 Q. Okay. Now, I wanted to ask you a few questions. The
23 affidavit, which was proffered to the Court, that was done by
24 you in conjunction with officers from Idaho; is that correct?

25 A. It was drafted by me, using some additional information

Jacob Olson - Cross

1 from Rexburg, Idaho police department.

2 Q. Okay. And I just wanted to clarify a few things that I
3 noticed in the affidavit, if you could answer some of these.

4 Do you have any photographs of the alleged knife that was used
5 in this incident?

6 A. [Inaudible].

7 Q. Is it a no?

8 A. As of right now, no. There was a knife located during the
9 vehicle search. I have yet to see those photos yet.

10 Q. Okay. And are you aware that that was the type of knife
11 described by the complainant?

12 A. I'm unaware because I haven't seen the photos yet.

13 Q. Okay. Now, I wanted to ask you, with respect to the
14 information that [inaudible] by H.P. in this case, did you
15 speak to H.P. directly?

16 A. Yes.

17 Q. Okay. In your conversations with H.P., as far as the
18 initial encounter with Mr. Smith, was the knife in question --
19 do you have information to suggest that that knife was used in
20 direct threat to H.P.?

21 A. The information [inaudible] specific [inaudible] issue. So
22 the knife was pulled out, brandished during the time that they
23 were in the car from [inaudible] pocket of his pants. It was
24 shown to the victim. And then looked at the victim with the
25 knife [inaudible] center console [inaudible].

Jacob Olson - Cross

1 Q. Okay. And just to be clear, that has been reported at some
2 point in your investigation?

3 A. Yes, sir.

4 Q. Okay. Now, let me -- let me follow with that. So was the
5 knife brandished, as you described it -- does that -- did that
6 happen before or after the [inaudible].

7 A. I'd have to go back and review exactly [inaudible]. But I
8 believe --

9 Q. Okay. Had you taken -- were any photographs taken of any
10 injury she may have sustained by the use of a knife or anything
11 of that nature?

12 A. No.

13 Q. Okay. Now, according to the affidavit, these two,
14 Mr. Smith and H.P., met on a dating app?

15 A. Correct.

16 Q. And is that something that's common for individuals at
17 their age, approximately 19 and 18; to meet on these social
18 media apps?

19 A. I would assume so. I'm outside that age group, so I can't
20 [inaudible] say. But I believe [inaudible].

21 Q. Okay. And there's nothing out of the ordinary with someone
22 of Mr. Smith's age getting on an app like that and meeting
23 someone his age as well, right?

24 A. I don't see anything improper about that.

25 Q. Would you agree that -- and I'm not sure what your

Jacob Olson - Cross

1 experience is with respect to investigation -- you know, you've
2 had the opportunity to investigate online predators?

3 A. Yes.

4 Q. Would you agree that this situation is completely different
5 than something where -- let's just say, for example, someone
6 groomed another individual to meet them, you know, and that
7 type of nature of a case, right? This is a completely
8 different case?

9 A. I'm not sure I agree to that.

10 Q. Okay. Do you -- with respect to the information that you
11 obtained from H.P.'s cellphone, do you have a complete list of
12 all the conversations she had with Mr. Smith?

13 A. I have a Tinder conversation that was obtained [inaudible]
14 warrants -- Tinder application. I'd have to go back and review
15 the cellphone for any text messages. But I believe the Tinder
16 conversation [inaudible], and then there were some phonecalls.

17 Q. Okay. Now, the affidavit suggests that H.P. objected to
18 going to the state -- the national park; is that right?

19 A. That's correct.

20 Q. Now, did she indicate in her conversations with you whether
21 or not there was an opportunity for her to get out of the
22 vehicle?

23 A. You're going to have to be more specific about your
24 question. I apologize. I don't know exactly what you mean.

25 Q. Sure. Just [inaudible]. It's a simple question. Did she

Jacob Olson - Cross

1 [inaudible] -- in your conversations with H.P., that at any
2 point there was an opportunity for her to remove herself from
3 the Honda Civic?

4 A. Her indications were that she asked him to take her back to
5 her apartment. He would not take her back [inaudible], and
6 then proceeded to go to Yellowstone National Park where
7 cellphone service and such became way more -- the phone was
8 taken during that time as well.

9 Q. Did she indicate [inaudible] out of her hand? How did --
10 how did he [inaudible]?

11 A. From what I -- from what I understand, she was holding the
12 phone, and he took it from her.

13 Q. Did he use force against her to take that phone?

14 A. I don't know what you mean, sir. He took the phone from
15 her. You know, he didn't punch her before he did it, but he
16 took the phone from her. She was in [inaudible]. He was
17 driving.

18 Q. Okay. And that's what I'm getting at. I was looking at
19 the affidavit. It didn't have any specific with respect to how
20 did it happen, when did it happen. It just says, the phone was
21 taken. Right?

22 A. Okay.

23 Q. And that's the point. I just wanted to find out the nature
24 of how he obtained the phone.

25 So shortly after that, they arrived at a camp site; is that

Jacob Olson - Cross

1 right?

2 A. I'm not sure about "shortly." A couple of hours.

3 Q. Okay. Now, in the affidavit it indicates that she removed
4 herself from the vehicle and got into the tent; is that right?

5 A. No.

6 Q. Now, could you explain that to me then?

7 A. Yeah. She was able to get out of the vehicle when they got
8 to the camp site. She was able to grab her phone at that
9 point. She went into a women's restroom, approximately the
10 third stall down, and then he followed her into the women's
11 restroom, stood outside the stall.

12 Q. And the reason I ask is, it's not in the affidavit, so I
13 wasn't aware of those details.

14 A. Okay.

15 Q. I was simply going based on the affidavit, which suggests
16 that she arrived at the location, got out of the vehicle and
17 entered the -- and entered the tent.

18 A. Okay.

19 Q. So when she's in the tent, she has her phone; is that
20 right?

21 A. No. He ended up keeping the phone on his side of the tent
22 for a portion of [inaudible].

23 Q. Okay. And then -- and did you -- did you verify whether or
24 not she had an opportunity to send any messages while she
25 [inaudible] or at the location of the camp site?

Jacob Olson - Cross

1 A. Yes. There's no -- there was no cellphone service there
2 for her, or at least that's what [inaudible] her. So she
3 wasn't able to get messages out till the following day.

4 Q. Okay. And were there any other individuals in that camp
5 site where Mr. Smith and H.P. were located in that tent?

6 A. She was unaware. When they arrived, it was very dark, late
7 at night, and she couldn't see anybody else. [Inaudible] to
8 keep her voice down because he said there was other people.

9 Q. Okay. And, again, would you agree with me that the
10 information that you're providing the Court today is based on
11 the information that was given to you from H.P., right?

12 A. Yes.

13 Q. So would you agree with me that the strength of the
14 information that you're providing is, again, based on the
15 information that was provided to you through another party in
16 this case, correct?

17 A. It was provided by H.P. I don't understand the question.

18 Q. So with respect to the information that the Court has to
19 make their decision as to the offense itself, that information
20 was provided primarily from H.P.?

21 A. What specific information are you -- the question that you
22 just asked, the answers to those questions were provided by
23 information given from H.P., correct.

24 Q. Okay. That's all I wanted to know, is whether or not the
25 information that we're giving the Court, facts that we're

Jacob Olson - Cross

1 giving the Court are, again, provided from H.P. And that's all
2 I wanted.

3 So would you agree with me that these specific types of
4 cases are -- been categorized as a he said/she said type of
5 case?

6 A. I don't particularly agree with categorizing them as that,
7 no.

8 Q. And why is that?

9 A. Because I believe that the initial evidence that we've gone
10 into in regards to [inaudible] search warrant [inaudible] and
11 things help provide more evidence towards [inaudible].

12 Q. Now, that evidence that you just indicated right now, do
13 you have that evidence? Do we have that evidence in front of
14 [inaudible]?

15 A. You have an affidavit, I believe. I don't think
16 discovery's been provided yet.

17 Q. Okay. So the only information that the judge has right now
18 to analyze these facts are provided from H.P., right? Not
19 including the information that was [inaudible], right?

20 A. Okay. I'd have to see which affidavit -- see the affidavit
21 [inaudible] to see if there --

22 Q. Okay.

23 A. -- from [inaudible].

24 Q. Okay. Now, let me just make sure I have this straight.

25 The crime was reported on September the 10th, 2019, correct?

Jacob Olson - Redirect

1 A. Negative. It was provided September 8th.

2 Q. Okay. And I'm just clarifying that because the affidavit
3 would suggest that she provided district court with the agents
4 on -- excuse me -- not the agents but the officers from the
5 police department on September [inaudible] in the probable
6 cause section on Page 2 of the affidavit.

7 A. She did a follow-up with that agency on September 10th, I
8 believe. September 8th, minutes after returning to town, her
9 roommates pick her up, and they went directly to the Rexburg
10 Police Department where [inaudible].

11 Q. Okay. Thank you for clearing that up. [Inaudible] of the
12 affidavit.

13 Now, if you know, do you know if Mr. Smith attempted to
14 contact or threaten H.P. after the alleged incident?

15 A. There is no report of that.

16 MR. LARA: I have no further questions for the agent,
17 Your Honor.

18 THE COURT: Okay. Thank you.

19 Ms. Garcia, do you have anything you'd like to follow up
20 on?

21 MS. GARCIA: Yes, Your Honor. I do.

22 REDIRECT EXAMINATION

23 BY MS. GARCIA:

24 Q. In regard to the question posed to you whether there were
25 any photographs of injuries as a result of the knife, you said

Jacob Olson - Redirect

1 no. However, will you describe to the Court any photographs
2 where there is displayed injury to the victim?

3 A. [Inaudible].

4 Q. Did you hear me?

5 A. [Inaudible].

6 THE COURT: Why don't you repeat that question?

7 THE WITNESS: [Inaudible].

8 BY MS. GARCIA:

9 Q. Agent Olson.

10 A. Yes, ma'am.

11 Q. Can you hear me?

12 A. Yeah. I can hear you now. [Inaudible].

13 Q. Agent Olson, you were asked questions about any injury as a
14 result of the knife that Mr. Smith had. And you said there
15 were none. Can you describe to the Court any injuries that you
16 observed in photographs of the victim?

17 A. Yes. The victim has photos of a small abrasion on her
18 neck, some marks on her breast, and then reported some initial
19 scratches on her stomach. She also has multiple photos of a --
20 I don't remember the name of it, but the muscle between the top
21 bend in your thumb was torn.

22 THE COURT: Okay. Anything else, Ms. Garcia?

23 MS. GARCIA: Nothing else, Your Honor. Thank you.

24 THE COURT: Okay. Do you have anything further that
25 you'd like to put before the Court, Ms. Garcia, apart from

Jacob Olson - Redirect

1 arguing?

2 MS. GARCIA: Just in regard to -- if the agent will
3 please describe the area that she's in.

4 BY MS. GARCIA:

5 Q. It's not like there's a lot of towns around there, is
6 there? Is it woodsy? Houses? Basic [inaudible].

7 THE COURT: Were you able to hear that, Agent Olson,
8 that question? We have a pretty dicey connection, folks. Can
9 you hear me, Agent Olson?

10 MS. GARCIA: [Inaudible].

11 THE WITNESS: Is this [inaudible]? Yes.

12 MS. GARCIA: That's a lot [inaudible].

13 THE WITNESS: I'm sorry.

14 BY MS. GARCIA:

15 Q. [Inaudible] Would you please describe the environment in
16 which the victim was taken as far as being woodsy, houses?
17 What is it?

18 A. Yes. The area where they left in Rexburg -- they left
19 Idaho and drove toward Montana and then entered the west
20 section of Yellowstone and then went into a campground within
21 the interior of the park. And it's very remote; no cellphone
22 service; really dark; obviously, big woods of Montana and
23 Wyoming.

24 THE COURT: Okay. Anything --

25 MS. GARCIA: Other than that, Your Honor, nothing

1 further.

2 THE COURT: Okay. Mr. Lara, any further questions?

3 MR. LARA: No further questions for the agent, Judge.

4 THE COURT: Okay. Thank you, Agent Olson. You may --
5 you may be excused.

6 Anything else that you'd like to introduce, Ms. Garcia?

7 Other evidence?

8 MS. GARCIA: Nothing for the government, Your Honor.

9 THE COURT: Okay. Mr. Lara, do you have any evidence
10 you'd like to proffer or otherwise introduce?

11 MR. LARA: Yes, Judge. Yesterday afternoon we sent
12 over to the Court a few affidavits as exhibits. Exhibit Number
13 1 is detailed information from Bank of America for Tammy
14 Smith --

15 THE COURT: Okay.

16 MR. LARA: -- Cody Smith's mother. It's a mortgage
17 for her home.

18 THE COURT: I have that.

19 MR. LARA: Exhibit Number 2, Judge, the Court has the
20 flight itinerary from Florida to Wyoming district court for
21 Mr. Cody Smith that was purchased by Tammy Smith to make sure
22 that he can arrive for his Wyoming court date should the Court
23 grant him a bond.

24 Defendant's Exhibit Number 3 are taxes from Cody Smith for
25 2018, the most recent taxes that he has, provided to the Court

1 to show that he has been employed prior to this incident.

2 Exhibit Number 4 are documents from Cody Smith of his
3 enlistment with the Navy, Your Honor. That was provided in
4 Exhibit Number 4. And that's exactly where he was apprehended
5 on this matter.

6 Exhibits 5 through 11, those are a series of affidavits and
7 letters from the family. I'm not sure if the Court had an
8 opportunity to read those. They do provide information from
9 Tammy Smith, Donovan Smith, his father, as well as his
10 grandfather from his maternal side and grandmother from
11 maternal side, as well as his grandmother from the paternal
12 side, all vouching for his character as well as willingness to
13 be a third-party custodian in this matter as well as providing
14 collateral for the Court should they grant a bond.

15 Exhibit Number 10 and 11, Your Honor, are letters from
16 family friends attesting to his character; provided the Court
17 that as well.

18 And then, lastly, we have Exhibit Number 12, which is a
19 copy of his passport, which his mother has brought here to
20 Texas. She's presently sitting alongside of me in my office,
21 Your Honor. She brought the passports. The Court may find, as
22 [inaudible] of the bond, he would surrender that as part of the
23 -- of that. So, again, it's Exhibit Number 12, Your Honor.

24 Those are the exhibits that we ask to present to the Court
25 and submit as evidence on his behalf.

1 THE COURT: Okay. Thank you, Mr. Lara. I do have all
2 those here in front of me and have them on the screen right
3 now.

4 Okay. Anything else, Mr. Lara, to introduce into evidence
5 before we get into argument?

6 MR. LARA: No, Your Honor. I believe that's all we
7 had in terms of exhibits for evidence, Judge [inaudible].

8 THE COURT: Okay. Ms. Garcia, do you want to begin
9 with your argument for detention?

10 MS. GARCIA: Yes, Your Honor. With respect to the
11 affidavits provided by Mr. Lara, it shows that the defendant
12 has a lot of great family support. However, there seems to be
13 this notion that there's a misunderstanding about something.
14 When we're dealing with victims, especially victims who have
15 been kidnapped, sexually abused in any way, there's no
16 misunderstandings, especially when there's evidence to support
17 injuries and documentation by photographs, for example,
18 photographs of the vehicle entering Yellowstone Park, and
19 everything is confirmed as to what the victim reported. So
20 there's no misunderstanding.

21 And in this particular case, kidnapping carries a penalty
22 of up to life, Your Honor. And the fact that he brandished the
23 knife, he showed it to her [inaudible] as a form of
24 intimidation. These are acts that [inaudible] do not warrant
25 one being released on bond.

1 The fact that the defendant -- the victim repeatedly told
2 him no, not to take her and he [inaudible] Yellowstone. And he
3 had his tent already set up there. That's all premeditated.
4 They wouldn't accept the [inaudible] self-prove [inaudible]
5 despite the praises that he receives from his family.

6 This is the only incident that we're aware about. We don't
7 know this happened to anyone else [inaudible] has. But the
8 fact that this [inaudible], it did happen.

9 Now, with reference to the affidavits, the mother -- the
10 mortgage shows that she's only been in that house for one year
11 and four months. Therefore, there's little equity in that
12 house.

13 As far as the ticket itinerary, you can buy a ticket.
14 Whether he'd get on that plane and show up, that's a different
15 matter. So it's the government's position that the best
16 decision here is to keep Mr. Smith in detention, especially in
17 light of some of these affidavits describing his -- describing
18 him as an adventurous person who was traveled to Cuba,
19 South Africa, Australia. Then there is a chance of flight
20 risk, Your Honor. So based on a chance of flight risk and the
21 fact that he is a danger [inaudible].

22 THE COURT: Okay. We just missed that last part. You
23 said -- you were just summing up that you're requesting
24 detention based on flight, and then you cut out. Why don't you
25 just repeat that part.

1 MS. GARCIA: And danger to the community as well, Your
2 Honor, based on the facts and circumstances of this case.

3 THE COURT: Okay. Thank you, Ms. Garcia.

4 Mr. Lara?

5 MR. LARA: Yes, Your Honor. First of all, Judge, I
6 want -- I want to just communicate that I don't believe that
7 the government has even come close to providing a preponderance
8 of the evidence standard on the flight risk issue, number one.

9 Number two, on the dangerousness issue, Judge, I think
10 they've fallen completely short of providing clear and
11 convincing evidence to suggest that he's a danger to the
12 community.

13 Now, I wanted to address some of the factors that the Court
14 would consider, this Court is clearly aware of, 3142(g), to
15 determine whether or not detention is warranted here. In
16 looking at the affidavits and the nature of the offense
17 charged, that seems to be the majority of what the government's
18 arguing. The government is essentially just arguing the nature
19 of the offense. That's what they're expecting the Court to
20 make their decision on, in saying, This is the type of offense
21 that we don't let people out on bond for.

22 Now, I would -- I would -- my position, Judge -- and,
23 again, a majority of the information that the Court has to
24 determine is based on an affidavit which was provided from an
25 individual -- again, it's a he said/she said type of situation,

1 Your Honor. And that's what the Court is being asked from the
2 government to make its ruling upon.

3 Now, if the Court looks at the weight of evidence against a
4 person, Mr. Smith is presumed innocent. And the Court is aware
5 of that and has mentioned it, as well. He has a presumption of
6 innocence. And that carries a lot of weight, Your Honor.

7 If we look at the history and characteristics of the person
8 here, the affidavit provided by Mrs. Smith, Tammy Smith,
9 including [inaudible] to the Court, that not only is she
10 willing to sign as a third-party custodian. She is going to
11 put up her own property; not only the home, whatever property
12 she needs to put up, in order to make sure that her son, her
13 20-year-old son gets out on bond, she is willing to do that
14 because she knows -- again, she knows that -- who her son is.
15 She knows that he is going to comply with every condition this
16 Court would impose.

17 Not only that, Your Honor, if you look at the history and
18 characteristics of this individual, we're talking about
19 Mr. Smith here who recently was [inaudible].

20 (Cellphone ringing loudly)

21 MR. LARA: -- as a medic in the Navy [inaudible], to
22 the point [inaudible] where he was, was in the final stages of
23 completing that training. Mr. Smith has no intention of
24 leaving this country, has no intention of fleeing from the
25 United States and not presenting himself against these false

1 accusations.

2 Now, again, there's a time and there's going to be the
3 place for us to argue that, Your Honor, with respect to the
4 elements of the case. We just ask the Court to consider all
5 the factors this Court will consider in making a determination
6 based on, again, his mother standing behind him. She has at
7 least a hundred thousand dollars equity in that home. Her --
8 his grandfather is standing behind him. He's also willing to
9 sign as a third-party custodian. His grandmother is also
10 willing to stand and sign as a third-party custodian. They
11 have strong roots to Florida, Your Honor.

12 And clearly, the family supports this young man because
13 he's done nothing but be an outstanding, again [inaudible].
14 Now, when the Court looks at employment history, we provided
15 the Court his history, 2018. He was in high school prior to
16 that. So there wasn't much time to [inaudible] his job. His
17 father has clearly indicated, should he be given a bond, he's
18 going to work with him. And if he's working with his father,
19 that means that he would be an individual that's going to be
20 supervising him throughout the day should the Court allow him
21 to work during the period awaiting for an appearance in court
22 in Wyoming.

23 Now, when we look at the financial resources -- now, the
24 government made -- indicates that he's a flight risk
25 [inaudible] South Africa. Judge, that doesn't hold [inaudible]

1 willing to submit to the Court and surrender his passport, he's
2 not going to travel anywhere. Much less, with the situation
3 that we have right now with COVID-19, that there are travel
4 restrictions. He's not going anywhere. He's going to be home.
5 He's going to be with his family.

6 And the Court can further even apply house arrest. If that
7 wasn't enough, the Court could [inaudible] GPS. In the
8 pretrial services report the pretrial services officer also
9 indicated that the mother is willing to install a landline and
10 do anything this Court would ask, to make sure someone is
11 supervising him at all times. Is it necessary? I don't
12 believe so. But that's to the extent that they're willing to
13 go to assure that there are some conditions that can be given
14 to this individual.

15 Now, the length of the residence in his community in
16 Florida, he's lived there all his life. All his family lives
17 there. And, Judge, he is not going anywhere. We have
18 affidavits that support that. Friends of the family, community
19 ties, again, he has people that are looking out for him there
20 in Florida where his family resides. He's not a flight risk.

21 Now, past conduct, he has no criminal history. He's never
22 been in trouble before. There is no indication that he's a
23 threat to anyone. The [inaudible] officer, the agent testified
24 that there is no evidence to support that he attempted to reach
25 out to this individual; that he attempted to speak to this

1 individual after these [inaudible] have occurred.

2 Again, if we were in a situation where this man was a
3 stalker, where he was looking for this individual, possibly I'd
4 understand, at least [inaudible]. But Mr. Smith has made no
5 contact with this individual. He was, again, in the Navy,
6 doing what he wanted to do as a medic.

7 And, Your Honor, if the record -- he doesn't have a record,
8 so we can't really provide the Court assurances of his past
9 appearances in court. But I don't think that should go against
10 him simply because he has [inaudible]. Now --

11 THE COURT: Mr. Lara, can I just ask you -- just break
12 down for me what happens practically next in this case. If
13 he's set for proceedings, he's either going to be in custody
14 and transported or he'll go back to Florida and have a court
15 date in Wyoming; is that right? Is that what's going to happen
16 next for him?

17 MR. LARA: I'm sorry. Were you asking me, Judge?

18 THE COURT: Yes.

19 MR. LARA: Okay. So what would happen if he's not
20 granted a bond in this situation, they would take him out to
21 Wyoming. At Wyoming they would either attempt another
22 detention hearing pending the resolution or the scheduling
23 order from the Court. If he's granted a bond, he would go out
24 to Florida and await a scheduling order. We already have an
25 attorney out there in Wyoming. He's been retained to make sure

1 that he is going to comply with all settings out there in
2 Wyoming.

3 So if he gets a scheduling order, which is typically, in
4 situations like this [inaudible], Your Honor -- it's typically
5 a month and a half when it's out of state, usually when they
6 set hearings [inaudible]. Judge, with the situation right now
7 with the virus, I don't know how soon that would be set.
8 However, it could be even two months, three months down the
9 line before he gets another hearing, another setting. And
10 that's what -- that's what I'm afraid of, Your Honor.

11 THE COURT: Okay. Well, you know, what I wanted to
12 clarify just for the record and also for Mr. Smith's benefit is
13 that if he were to be detained, he would have an opportunity to
14 revisit that decision with the Court in Wyoming, the Court that
15 has jurisdiction over the charged offense. And that's your --
16 that's your understanding as well, it sounds like, Mr. Lara; is
17 that right?

18 MR. LARA: Yes, Your Honor. That is -- that is
19 correct.

20 THE COURT: Okay. And I interrupted --

21 MR. LARA: Just --

22 THE COURT: Yeah. I interrupted you. Please go ahead
23 and finish up.

24 MR. LARA: No, Judge. Just looking at our position,
25 Judge, we believe that there are [inaudible] conditions

1 available which would reasonably assure his appearance for all
2 judicial hearings and which would adequately protect the
3 public, Your Honor. And that's the standard here, of would it
4 reasonably assure. There is not a requirement that it
5 absolutely guarantees. I believe with the affidavits provided,
6 that would [inaudible] hearings in the state of Wyoming, Your
7 Honor.

8 We've also provided a release to a third-party custodian,
9 surrender of his U.S. passport, home detention if necessary,
10 GPS monitoring if necessary, any other conditions the Court
11 would impose.

12 And we, frankly, Judge, believe that the only credible
13 argument from the government here is the nature of the offense.
14 The government argues for detention. We believe detention is
15 insufficient to overcome his presumption of innocence and the
16 Court's obligation under the Bail Reform Act to release
17 [inaudible] on the least restrictive combination of conditions.
18 We believe we've presented the Court with sufficient amount of
19 conditions that can be [inaudible] to assure that he's not a
20 flight risk [inaudible] and, two, that he is not a danger to
21 anyone if he's being supervised 24/7, GPS, anything
22 [inaudible].

23 THE COURT: Okay.

24 MR. LARA: And that's all.

25 THE COURT: Thank you.

1 Ms. Garcia, anything to follow up on?

2 MS. GARCIA: Yes, Your Honor. Just as to -- the Navy
3 thing is recent. We believe that all began the end of March.
4 So it's not like he was in the Navy in September when this
5 offense was committed.

6 THE COURT: Okay.

7 MS. GARCIA: And the defense [inaudible] saying it's a
8 he said/she said. No. It's she said. And what she said is
9 supported by evidence, supported by injury to her person,
10 supported by the photographs, supported by records, all
11 consistent with her description of the events that transpired.
12 So it's not a he said/she said.

13 And as far as what's been presented today, there's no
14 evidence rebutting the fact circumstances of the offense. It
15 is truly what the victim has said, what the agent -- his
16 follow-up as far as the investigation for search warrant,
17 et cetera.

18 And [inaudible] they referred to the strong [inaudible] of
19 family in Florida. In all the affidavits, the only thing I
20 ever saw was someone who has known the family for 35 years.
21 Other than that, they don't establish how long they've
22 [inaudible]. They say several, several years. "Several" can
23 mean anything.

24 And it also -- Mr. Lara emphasized that there is no flight
25 risk. Your Honor, this defendant has absolutely no ties to

1 Wyoming, absolutely none. And being in Florida I think would
2 lend itself to a lot of potential ways that he could leave the
3 country. And, therefore, the government maintains that
4 detention is the best thing in this case.

5 THE COURT: Okay. Thanks, Ms. Garcia. Just one
6 follow-up question. There's no presumption in this case; is
7 that correct? The victim here was not a minor; is that right?

8 MR. LARA: That's correct, Your Honor.

9 MS. GARCIA: Other than the --

10 THE COURT: Go ahead.

11 MS. GARCIA: [Inaudible], Your Honor. Just that
12 [inaudible] there is the range of punishment. And this -- the
13 kidnapping is up to life.

14 THE COURT: Okay. But --

15 MS. GARCIA: [Inaudible].

16 MR. LARA: I just wanted to clarify one -- just one
17 point.

18 MS. GARCIA: -- [inaudible] factor.

19 THE COURT: Go ahead, Mr. Lara. Go ahead.

20 MR. LARA: Just one point, Judge. Mr. Smith has been
21 enlisted in the Navy since May of 2019. It's not something
22 that he just woke up one day in January and decided to do it.
23 He's been in the Navy. As soon as he graduated, he enlisted.
24 And all of the trips that he's taken, he's taken with family as
25 well, Judge. I just don't see the issue there with the flight

1 risk, Judge.

2 THE COURT: Okay. Thank you, Mr. Lara.

3 All right. Well, I think I have --

4 MR. LARA: Thank you, Judge.

5 THE COURT: I think I have the information that I need
6 here, thanks to all of you.

7 And look, Mr. Smith, this is -- what I said at the outset
8 remains true; that you're entitled to the presumption of
9 innocence in this case. And Mr. Lara has presented a very
10 strong case for you to get bail. I have a recommendation from
11 pretrial services that recommends against that. But he has --
12 he has very ably, you know, attacked that recommendation.

13 But ultimately, my conclusion here is controlled or
14 compelled in my view by the -- by the fact that there was a
15 knife involved in this case. I think if we were to take out
16 the weapon and the credible evidence that we heard today at the
17 hearing about the involvement of a knife -- of a knife in the
18 testimony from Agent Olson -- which, by the way, I credit. I
19 find that testimony credible. That, I think, is what -- is
20 what makes this case one that sort of pushes it over the edge.
21 There's a number of things that play into that, but that's
22 really the -- ultimately the thing that pushes this case for me
23 into one where I'm not going to be able to give you a bond.

24 But I just want to emphasize that, to me, this is a very,
25 very close case and one that I fully expect my -- where this

1 issue might be revisited by the Court in Wyoming. You know,
2 the Court there has got to be assured with respect to your ties
3 to Wyoming or with respect to your ability to get up to
4 Wyoming. And so what we're -- so what we're addressing right
5 now is what happens to you pending when you get on up to
6 Wyoming and have an opportunity for them to take a look at this
7 issue.

8 So I'm going to order that you be detained. I find that
9 the government's met its burden in this case with respect to
10 flight and dangerousness. It's two different burdens. It's a
11 preponderance of the evidence with respect to flight, and it's
12 clear and convincing evidence with respect to dangerousness.
13 And much of that conclusion is informed by the nature and
14 circumstances of the alleged offense. And at this -- at this
15 stage -- at this stage these are just allegations, and I
16 recognize that. But there were injuries involved. The nature
17 of the offense is a -- is a kidnapping. It carries up to a
18 life term of imprisonment. Obviously, your criminal history is
19 clear. And so that would play into things as well later on.

20 But there's also, as we heard, some evidence introduced at
21 this stage of premeditation as well. And so all of that plays
22 into my conclusion and ultimately leads me to conclude that
23 you'll be detained.

24 Okay. Mr. Lara, is there anything further from you, sir?

25 MR. LARA: Nothing further at this time, Judge.

1 THE COURT: Okay. Thank you, sir.

2 Ms. Garcia, anything further from you?

3 MS. GARCIA: No, Your Honor. Thank you.

4 THE COURT: Okay. All right. So, Mr. Smith, as I
5 mentioned, you'll be held in custody, and you'll be moved on up
6 to Wyoming where proceedings will continue. That may take a
7 little bit of time. And, obviously, with the current crisis,
8 we're not sure how long that's going to take. But as I
9 mentioned, I fully expect that this issue may be revisited.
10 Okay?

11 That's all I have. Thank y'all, everybody. You may be
12 excused. Court will be in recess.

13 * * *

14 (3:18 p.m.)

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I, court approved transcriber, certify that the foregoing
is a correct transcript from the electronic sound recording of
the proceedings in the above-entitled matter.

Date: 4/24/2020 /s/ Chris Poage
Approved Transcriber